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COMPETITION, 2023.**

BEFORE THE INTER STATE WATER DISPUTE TRIBUNAL

APPLICATION NO. 2023

DEMOCRATIC REPUBLIC OF DHALL APPLICANT

VERSUS

REPUBLIC OF KARTINARESPONDENT

Date: 27th August, 2023

MEMORIAL ON BEHALF OF APPLICANT

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TABLE OF ABBREVIATION

Sr. No.	Abbreviations	Full Forms
1.	AIR	All India Reporter
2.	Art.	Article
3.	Ed.	Edition
4.	EIA	Environmental Impact Assessments
5.	GATT	General Agreement on Trade and Tariff
6.	GERD	Grand Ethiopian Renaissance Dam
7.	GWh	Gigawatt Hour
8.	HC	High Court
9.	Hon'ble	Honorable
10.	ICJ	International Court of Justice
11.	Id.	Ibidem
12.	ILC	International Labour Conference
13.	J.	Justice
14.	KHEP	Kishanganga Hydo Electric Power Project
15.	LJ	Law Journal
16.	No.	Number
17.	Ors.	Others
18.	P.	Paragraph
19.	pH	Potential of Hydrogen
20.	pp.	Pages
21.	SCC	Supreme Court Cases
22.	SCR	Supreme Court Record
23.	Sec.	Section
24.	UOI	Union of India
25.	U.S.A	Unites States of America
26.	USD	United States Dollar
27.	Vol.	Volume
28.	w.r.t	With respect to

INDEX OF AUTHORITIES

[A] BOOKS

INTERNATIONAL LAW

1. Barnes, Property Rights and Natural Resources (2009)
2. Blanco & Razzaque, Globalisation and Natural Resources Law: Challenges, Key Issues And Perspectives (2012).
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4. Cassesse, International Law (2001).
5. Hanqin, Transboundary Damage in International Law (2003).
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CONSTITUTIONAL LAW

1. Dr. Durga Das Basu, Shorter Constitution of India, (Justice A.R. Lakshmanan, V.R. Manohar, 14th Ed., 2013)
2. Dr. Subhash C. Kashyap, Constituional Law of India, Vol. 1, (2nd Ed., 2015)
3. H.M. Seervai, Constitutional Law of India, Vol. 1, (4th Ed., 2015)
4. M.P. Jain, Indian Constitutional Law, (7th Ed., 2016)
5. Sanjay S. Jain and Sathya Narayan, Basic Structure Constitutionalism, (1st Ed., 2011)

[B] LEGAL DATABASE

1. www.sconline.com
2. www.manupatra.com
3. www.livelaw.com
4. www.heinonline.com

[C] LEGISLATIONS

1. Interstate Water Disputes Act, 1956.
2. Helsinki Rules, 1956.
3. Convention on Law of Non-Navigational Uses of International Watercourses 1997.
4. Vienna Convention.

[D] LEXICONS

1. Black Law Dictionary
2. Lexico
3. Concise Law Dictionary
4. Oxford Dictionary of Law
5. Brooms Legal Maxims
6. Ganguly Law Lexicons

[E] TABLE OF CASES

Sr. No.	Cases
1.	Argentina v. Uruguay
2.	Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)
3.	Chagos Marine Protected Area Arbitration, Mauritius v United Kingdom
4.	Gabčíkovo-Nagymaros Project, Hungary v. Slovakia,
5.	Hilvering v. Gregory
6.	Nicaragua v. United States
7.	R v. Home Secretary

STATEMENT OF JURISDICTION

The applicant in the present case approached the Hon'ble Domestic Court of the Republic of Kartina under Article VII of the River Biffin Water Treaty.

Article VII of the River Biffin Water Treaty reads as:

(1) Any question which arises between the Parties concerning the interpretation or application of this Treaty or the existence of any fact which, if established, might constitute a breach of this Treaty can be brought to the domestic courts of the two Parties to this Treaty.

(2) As soon as a dispute to be settled in accordance with the paragraphs of this Article has arisen, the Parties are free to approach either the Kartinian or Dhallian domestic courts for the adjudication of the matter. The respective Constitution will apply.

(3) When referred to the courts of Kartina, the relevant act to be applied will be the Interstate River Water Disputes Act, 1956.

Further, the Central Government of Kartina appointed an ad-hoc Tribunal under Section 4 of the Interstate River Water Disputes Act, 1956 to resolve the dispute. The present River Water Dispute Tribunal has the power to hear the instant matter w.r.t Section. 5 of the Interstate River Water Disputes Act, 1956.

Article 5 (2) of the Interstate River Water Disputes Act, 1956 reads as:

The Tribunal shall investigate the matters referred to it and forward to the Central Government a report setting out the facts as found by it and giving its decision on the matters referred to it within a period of three years:

Provided that if the decision cannot be given for unavoidable reasons, within a period of three years, the Central Government may extend the period for a further period not exceeding two years.

This River Water Dispute Tribunal has the jurisdiction to hear current dispute and the jurisdiction of the Tribunal is not in dispute.

STATEMENT OF FACTS

KARTINA

The Republic of Kartina is a developing ex-colony situated in the continent of Tymayus. Topologically, the country is mostly flat, barring a range of mountains, the Acton Ranges, lying in the northernmost part of the Kartinian landmass.

DHALL

The Democratic Republic of Dhall shares a portion of its eastern border with the western border of Kartina. A fairly big portion of the population is also engaged in farming.

TREATY

According to the treaty entered by Kartina and Dhall, none of the governments of any of the countries or any private parties are permitted to take any action that could change the flow rate or the course of River Biffin. This Treaty was to be in force for 50 years, post which the delegates would have to renew.

DISPUTE

On 22nd June, 2022, Mr. Angelo Mubble, the President of Kartina, announced the construction of The Great Kartina Dam a Run-of-River Plant, on the river Biffin. Prior to this announcement, no information about this was given to Dhall. This action was in contravention to the Treaty, Ms. Nancy Lu, the Prime Minister of Dhall expressed her displeasure with the Dam. Though she conceded that the subsidized electricity would be beneficial, they maintained the stance that the advantages did not outweigh the downfalls. Mr. Angelo Mubble has urged the people of Dhall to look at the bigger picture, not take this issue further, and accept the hydroelectricity at subsidized rates. However, Ms. Lu is not willing to back down. The Democratic Republic of Dhall approaches the domestic courts at the Republic of Kartina, to resolve the dispute.

STATEMENT OF ISSUES

ISSUE I

**WHETHER OR NOT KARTINA SHOULD BE GIVEN THE POWER TO DICTATE
HOW NATURAL RESOURCES ARE DISTRIBUTED?**

ISSUE II

**WHETHER OR NOT KARTINA IS IN CONTRAVENTION OF THE PRINCIPLES OF
INTERNATIONAL ENVIRONMENTAL LAW AND INTERNATIONAL TREATY LAW?**

ISSUE III

**WHETHER OR NOT FUNDAMENTAL RIGHTS ENshrined IN THE CONSTITUTION
OF KARTINA WILL APPLY TO THE PEOPLE OF DHALL?**

SUMMARY OF ARGUMENTS

[1] WHETHER OR NOT KARTINA SHOULD BE GIVEN THE POWER TO DICTATE HOW NATURAL RESOURCES ARE DISTRIBUTED?

The counsel for the applicant humbly submits before this hon'ble tribunal that Kartina should not be given the power to dictate how natural resources are distributed. It is to be noted that a vast amount of the people of Dhall are engaged in the agriculture sector and highly depend on the water of River Biffin for irrigation as sea water cannot be used for the same due to its saline nature. While considering population dependent on the water also as a factor to determine equitable distribution of water, then in this case Dhall should also have a say in how it is to be distributed. Additionally, the provisions of the Helsinki Rules 1966, Convention on the Law of the Non-navigational Uses of International Watercourses 1997 and Berlin Rules 2004 provides for various other factors to be considered like the cost of alternative use. For Dhall, the alternative of the river water for the purpose of irrigation, comes at a very high cost of desalination of the sea water. This process is a very costly, long and tedious hence not preferred. Furthermore, the Krishna Tribunal in the Krishna-Godavari water dispute laid down that the use of water for irrigation was to be preferred to the production of hydroelectric power. Hence, building upon this, the counsel would like to humbly submit that the use of water for irrigation as required by Dhall should be preferred over the production of hydroelectricity produced by the dam as required by Kartina. Hence, Kartina should not be given the power to dictate how the river water should be distributed.

[2] WHETHER OR NOT KARTINA IS IN CONTRAVENTION OF THE PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW AND INTERNATIONAL TREATY LAW?

The counsel for the applicant humbly submits that Kartina is in contravention of the principles of International Environmental Law and International Treaty Law because that action practically kills the river. Upstream of the dam too, the river gets killed, for immediately upstream there is stagnant water, and further upstream, the river has lost its connections with the downstream river! This is because these structures not only stop the flow

of water to the downstream areas, they also stop the flow of everything else that was flowing in the river. Moreover, The ILC's approach favoured the text as the starting point on the basis that this was the best evidence of the finally agreed intent of the parties. As per the text of the agreement, no party will undertake any projects that will interfere with the natural course of the river, and any such construction will occur only when both parties have a common interest. In the present case, the Dhall doesn't have any interest in the construction of the dam and such a structure will change the natural course of the river. It is an abusive exercise by a member of its treaty right thus resulting in a breach of the treaty rights of the other Members and, as well, a violation of the treaty obligation of the Member so acting.

[3] WHETHER OR NOT FUNDAMNETAL RIGHTS ENSHRINED IN THE CONSTITUTION OF KARTINA WILL APPLY TO THE PEOPLE OF DHALL?

The counsel for the applicant would like to submit to this hon'ble tribunal that the fundamental rights enshrined in the Constitution of Kartina would apply to this dispute as Section VII(2) of the bilateral river treaty signed between the parties (Republic of Kartina and Democratic Republic of Dhall) reads as – “As soon as a dispute to be settled in accordance with the paragraphs of this Article has arisen, the Parties are free to approach either the Kartinian or Dhallian domestic courts for the adjudication of the matter. The respective Constitution will apply.” Since it is clearly mentioned in the Article that in case of a dispute, that the Constitution of the respective country approached will apply, since Dhall approached the domestic court of Kartina, it clearly implies that the Constitution of Kartina would apply. This directly leads to the point that the fundamental rights of the Constitution of Kartina will also apply to the people of Dhall. It is also to be noted that the provisions of the bilateral treaty signed between the countries holds utmost significance, especially when a dispute arises and it is essential to follow the provisions of the treaty by its letter as it is binding on the parties. Therefore, the counsel for the applicant would like to submit to this hon'ble tribunal that the fundamental rights enshrined in Constitution of Kartina would be applicable to the people of Dhall and Kartina's claim of the non-applicability of the fundamental rights is invalid.

ARGUMENTS ADVANCED

ISSUE I: WHETHER OR NOT KARTINA SHOULD BE GIVEN THE POWER TO DICTATE HOW NATURAL RESOURCES ARE DISTRIBUTED?

RULE:

1. Helsinki Rules, 1966¹

Article IV - Each basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin.

Article V – 1. What is a reasonable and equitable share within the meaning of Article IV is to be determined in the light of all the relevant factors in each particular case.

2. Relevant factors which are to be considered include, but are not limited to:

- (b) the hydrology of the basin, including in particular the contribution of water by each basin State;
- (g) the comparative costs of alternative means of satisfying the economic and social needs of each basin State;
- (f) the population dependent on the waters of the basin in each basin State;

2. Convention on the Law of the Non-navigational Uses of International Watercourses, 1997²

Article 5 - Equitable and reasonable utilization and participation

Article 6 - Factors relevant to equitable and reasonable utilization

1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:

- (c) The population dependent on the watercourse in each watercourse State;
- (g) The availability of alternatives, of comparable value, to a particular planned or existing use.

¹ ILA, REPORT OF THE FIFTY-SECOND CONFERENCE, Helsinki, 1966, p. 477. The Helsinki Rules and the commentaries are given here as they have been published in the ILA publication HELSINKI RULES ON THE USES OF THE WATERS OF INTERNATIONAL RIVERS, London, 1967, at 7-55

² Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997, UN Doc. A/51/869,

3. Berlin Rules, 2004³

Article 12 - Equitable Utilization

Basin States shall in their respective territories manage the waters of an international drainage basin in an equitable and reasonable manner having due regard for the obligation not to cause significant harm to other basin States.

Article 13 - Determining an Equitable and Reasonable Use - 1. Equitable and reasonable use within the meaning of Article 12 is to be determined through consideration of all relevant factors in each particular case.

2. Relevant factors to be considered include, but are not limited to:

c. The population dependent on the waters of the international drainage basin in each basin State;

g. The availability of alternatives, of comparable value, to the particular planned or existing use;

i. The minimization of environmental harm.

Article 14 - Preferences among Uses

1. In determining an equitable and reasonable use, States shall first allocate waters to satisfy vital human needs.

2. No other use or category of uses shall have an inherent preference over any other use or category of uses.

Article 16 - Avoidance of Transboundary Harm

Basin States, in managing the waters of an international drainage basin, shall refrain from and prevent acts or omissions within their territory that cause significant harm to another basin State having due regard for the right of each basin State to make equitable and reasonable use of the waters.

Article 23 - The Precautionary Approach

2. States shall take all appropriate measures to prevent, eliminate, reduce, or control harm to the aquatic environment when there is a serious risk of significant adverse effect or to the sustainable use of waters even without conclusive proof of a causal relation between an act or omission and its expected effects.

Article 56 - Exchange of Information

³ Berlin Rules, 2004, Berlin Rules on Watercourses: Principles and Commentaries. Berlin, Springer Science & Business [accessed 27th August, 2023] Available at: https://link.springer.com/chapter/10.1007/978-1-4020-9867-3_1

3. The exchange of information under this Article shall include all relevant technical information for a program, plan, project, or activity, including the results of any relevant impact assessment.

Article 57 - Notification of Programs, Plans, Projects, or Activities

1. Basin States shall promptly notify other States or competent international organizations that may be affected significantly by a program, plan, project, or activity.

ARGUMENT:

The applicant would like to humbly submit before the Hon'ble tribunal that the Republic of Kartina should not be given the power to dictate how natural resources are distributed solely based on the claim that it has a bigger population and longer length of flow of River Biffin as compared to Democratic Republic of Dhall. The generally accepted and established environment law principles (as mentioned under RULE) provide for other factors apart from population that are to be taken into consideration for equitable distribution of water.

1. International Environment Law Principles.

1.1 Population - The counsel for the applicant would like to humbly submit that with reference to provisions of the Helsinki Rules 1966, Convention on the Law of the Non-navigational Uses of International Watercourses 1997 and Berlin Rules 2004, (as mentioned under RULE), the population dependent on the water or watercourse is one factor amongst others in determining the equitable and reasonable use of the water. In the present case, it is to be noted that a fairly big portion of the population of Dhall is engaged in farming. Since the country is surrounded by sea on the south of its landmass, and the sea water being saline, the farmers rely heavily on River Biffin for irrigation. Considering that a large amount of population highly depends on the river for irrigation, the counsel for the applicant submits that Dhall should also be given the power to dictate how the river water is to be distributed and it should not be the sole decision of Kartina.

1.2 Alternative Means - Another common factor to be taken into consideration according to the Helsinki Rules 1966, Convention on the Law of the Non-navigational Uses of International Watercourses 1997 and Berlin Rules 2004, is the comparative costs of alternative means of satisfying the economic and social needs. A great amount of population of Dhall is dependent on the water of River Biffin flowing from Kartina, for the purpose of irrigation. This is because the country is surrounded by sea on the south and the saline sea water cannot be used for the purpose of irrigation. The counsel for the applicant would like to humbly submit before

the hon'ble tribunal that the alternate source for procuring water for irrigation for farming, other than river water is the desalinated sea water. Desalination is a water treatment process in which salts are removed from water because saline water contains high concentrations of salts, which crops might not tolerate. Desalination also removes carbonate hardness from water. This results in water that has a lower resistance to changes in pH. Therefore, in such cases, the water has to be stabilized.⁴ Desalination plants are costly to operate, require enormous amounts of energy and are difficult to manage in an environmentally-friendly way, according to water policy experts. There are also environmental costs to desalination. In addition to the greenhouse gases emissions produced from the large amount of energy needed to operate, the process leaves behind leftover brine, or concentrated salt water, which can raise the salinity of seawater and damage local marine systems and water quality as a result.⁵ Thus, the counsel would like to humbly submit that the alternate available as compared to the existing use is a highly expensive and long process involving environmental impacts. In addition to this, Article 14 of the Berlin Rules 2004 explicitly mention that satisfaction of vital human needs is to be preferred over any other purpose for which the water is used. For the citizens of Dhall, agriculture and the water requirement for the same is a vital need as compared to being provided hydroelectricity at a subsidised rate. It is thus submitted to the hon'ble tribunal that, since the construction of the dam will change the flow of river as accepted by the hon'ble President of Kartina, Dhall will suffer huge losses as a result of the same, hence Kartina should not be given the power to dictate the distribution of the river water.

1.3 Information and Notification – Article 56 and 57 of the Berlin Rules 2004, provide for exchange of information and notification of programs, plans, projects, or activities respectively. Article 56 states that all relevant technical information for a program including any impact assessment results should be exchanged with the other State. Article 57 provides for notification of other States or competent international organizations that may be affected significantly by a program, plan, project, or activity. The actions of Kartina

⁴ Guy Sela, Irrigation With Desalinated Water, Cropaia [accessed 27 August 2023] Available at: <https://cropaia.com/blog/irrigation-with-desalinated-water/>

⁵ Emma Newburger, Why desalination won't save states dependent on Colorado River water, CNBC (27 Jan, 2023) Available at: <https://www.cnbc.com/2023/01/27/why-desalination-wont-save-states-dependent-on-colorado-river-water.html#:~:text=The%20environmental%20costs%20to%20desalination&text=In%20addition%20to%20the%20greenhouse,wa ter%20quality%20as%20a%20result.>

are not in concurrence with these provisions as the President of Kartina, directly announced the construction of The Great Kartina Dam and without giving any prior information to Dhall. Thus, non-conformity to this internationally accepted principle caused a great deal of trouble for Dhall.

2. Judicial Approach

2.1 Krishna -Godavari Water Dispute⁶ – One of the main problems in this river water dispute was that: Karnataka and Andhra Pradesh objected to the diversion of more water at Koyna by the upper riparian state, Maharashtra, for a hydroelectric project and other irrigation work, as this would reduce downstream flow, with adverse consequences for agriculture and industry. Two main issues addressed by the Krishna Tribunal include: (a) The extent to which the existing uses should be protected as opposed to future or contemplated uses. (b) Rules governing the preferential uses of water. In the first issue, the Tribunal concluded that projects, which were in operation or under consideration as in September 1960, should be preferred to contemplated uses and should be protected and that except by special consent of the parties, a project committed after 1960 should not be entitled to any priority over contemplated uses. In the second issue the Tribunal specified that all existing uses based on diversion of water outside the basin would receive protection. The Tribunal ruled that the use of water for irrigation was to be preferred to the production of hydroelectric power for two reasons: (a) Water is the only source of irrigation whereas coal, oil and other natural resources can be used for generating power. (b) Considering the socio-economic needs of the population and their dependence on the Krishna water for irrigation, the Tribunal ruled that irrigation should be given preference to power.

Thus, drawing on the lines of the award given by the tribunal, the counsel would like to humbly submit that the use of water for irrigation as required by Dhall should be preferred over the production of hydroelectricity produced by the dam as required by Kartina. Hence, Kartina should not be given the power to dictate how the river water should be distributed.⁷

⁶ Shah, R.B, Inter-state River Water Disputes: A Historical Review, 175-189, (1994)

⁷ Supra Note 3

2.2 Pulp Mills Case – The International Court of Justice, (ICJ) in the case of *Argentina v. Uruguay*⁸, noted that “if the environmental impact assessment confirms that there is a risk of significant transboundary harm, the State planning to undertake the activity is required . . . to notify and consult in good faith with the potentially affected State, where that is necessary to determine the appropriate measures to prevent or mitigate that risk.”⁹ In this case, the ICJ introduced the concept of binding environmental impact assessments (EIAs) into international environmental laws.

CONCLUSION:

Hence, the counsel for the applicant would humbly submit that taking into consideration the above internationally accepted environment principles and the cases cited, Kartina should not be allowed to construct the dam and thus not be given the power to dictate how natural resources, of river are to be distributed.

⁸ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14

⁹ *Id*

ISSUE II: WHETHER OR NOT KARTINA IS IN CONTRAVENTION OF THE PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW AND INTERNATIONAL TREATY LAW?

RULE:

1. Article 31 - General rule of interpretation: Vienna Convention of General Treaties¹⁰

1. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, ..

2. Article II: Provisions Regarding the Obligations of Kartina

(1) Dhall shall receive for unrestricted use all those waters which Kartina is under obligation to let flow under the provisions of Paragraph (2).

(3) A new Run-of-River Plant can be constructed by Kartina provided that it conforms to the condition that it does not cause material change to the natural channel, flow rate, and water quality of the River Biffin.

3. Article IV: Provisions Regarding the Obligations of Both Countries

(3) Each Party will use its best endeavours to maintain the natural channel of the River, as on the Effective Date, in such condition as will avoid, as far as practicable, any obstruction to the flow in these channels likely to cause material damage to the other Party.

4. Article V: Future Co-operation

(3) If either Party plans to construct any engineering work which would cause interference with the water of the River and which, in its opinion, would affect the other Party materially, it shall notify the other Party of its plans and shall supply such data relating to the work as may be available and as would enable the other Party to inform itself of the nature, magnitude and effect of the work.

¹⁰ United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, Available at: <https://www.refworld.org/docid/3ae6b3a10.html> [accessed 26 August 2023]

5. **The Helsinki Rules on the Uses of the Waters of International Rivers**¹¹: No watercourse state shall utilise the water in a manner that significantly harms another watercourse state, according to the principle of no major damage.

6. An innovative international legal framework and intergovernmental platform, **the Water Convention (also known as the Convention on the Protection and Use of Transboundary Watercourses and International Lakes)**¹² strives to promote the sustainable use of transboundary water resources by promoting collaboration.

7. The **Protocol on Water and Health**¹³ is a unique, legally enforceable document that aims to safeguard human health by improving water management and lowering illnesses associated with water use.

ARGUMENT:

In India when we construct a dam (e.g. Tehri), a hydropower project (e.g. 400 MW Vishnuprayag project on Alaknanda in Chamoli district in Uttarakhand) or diversion (Lower Ganga – Bhim Goda at Haridwar, Middle Ganga – Bijnor and Upper Ganga-Narora barrages), we do not have to leave any water for the downstream stretch of river. So complete drying up of the rivers for most of the dry months by these structures is the first direct impact of these structures on the river.¹⁴ Building a dam can affect a river in many ways. Fundamentally, the dam is a barrier that interrupts the natural river dynamics. Habitat is more lake-like and often unsuitable for coldwater fish species. Access to habitat blocked or fragmented.

In *Gabčíkovo-Nagymaros Dam case*¹⁵, early in the 1980s, work on the dams started. However, because of environmental concerns, Hungary halted construction on the Nagymaros dam in 1989. The International Court of Justice (ICJ) was finally consulted over the dispute between Slovakia and Hungary. The ICJ concluded in

¹¹ Supra Note 1

¹² Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention). Mar. 17, 1992, Helsinki, Finland, 31 I.L.M. 1369

¹³ Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes. Dec. 17, 1999, London, U.K., 36 I.L.M. 729

¹⁴ SANDRP, How do dams affect a river?, SANDRP (July 4, 2014) Available at: <https://sandrp.in/2014/07/04/how-do-dams-affect-a-river/>

¹⁵ *Gabčíkovo-Nagymaros Project, Hungary v Slovakia*, Judgment, Merits, ICJ GL No 92, [1997] ICJ Rep 7, [1997] ICJ Rep 88, (1998) 37 ILM 162, ICGJ 66 (ICJ 1997), 25th September 1997, International Court of Justice [ICJ]

1997 that Slovakia had broken the 1977 agreement by constructing the dam on its own. As per General Rule of Art. 31 of the Vienna Convention on the Law of the Treaties, The ILC's approach favoured the text as the starting point on the basis that this was the best evidence of the finally agreed intent of the parties.¹⁶ The ICJ has had to consider the role of good faith in other contexts in the law of treaties.

In *Nicaragua v. USA*¹⁷ the Court considered modification or withdrawal without notice of a declaration accepting the Court's jurisdiction, and said of such declarations: Read in the same spirit of analogy, this bears out the suggestion that one component of good faith in interpretation is reasonableness. One application of this general principle, the application widely known as the doctrine of abus de droit, prohibits the abusive exercise of a state's rights and enjoins that whenever the assertion of a right 'impinges on the field covered by [a] treaty obligation, it must be exercised bona fide, that is to say, reasonably.'¹⁸

In **NILE Basin Negotiations**, However, unilateral developments of water projects continue in parallel, with a potentially negative effect on the prospects of a comprehensive agreement

Having said this, our task here is to interpret the language of the chapeau, seeking additional interpretative guidance, as appropriate, from the general principles of international law.¹⁹

A reasonable and bona fide exercise of a right in such a case is one which is appropriate and necessary for the purpose of the right (i.e., in furtherance of the interests which the right is intended to protect).²⁰ But the exercise of the right in such a manner as to prejudice the interests of the other contracting party arising out of the treaty is unreasonable and is considered as inconsistent with the bona fide execution of the treaty obligation, and a breach of the treaty. ...

¹⁶ *Helvering v. Gregory*, No 324, 69 F2D 809(2D Cir 1934)

¹⁷ *Military and Paramilitary Activities in and against Nicaragua, Nicaragua v United States*, Judgment on Jurisdiction and Admissibility, ICJ GL No 70, [1984] ICJ Rep 392, ICGJ 111 (ICJ 1984), 26th November 1984, United Nations [UN]; International Court of Justice [ICJ]

¹⁸ [1978] ICJ Reports 3, at 21, para 51 (stating the ICJ's translation of an entry in Robert's Dictionnaire)

¹⁹ [1978] ICJ Reports 3, at 22, para 53; see also problems of punctuation in different languages

²⁰ B. Cheng, *General Principles of Law as applied by International Courts and Tribunals* (London: Stevens and Sons, Ltd., 1953), Chapter 4, in particular, p. 125

In **Certain Activities Carried Out by Nicaragua in the Border Area (*Costa Rica v. Nicaragua*)**²¹; The Court thus directed that Nicaragua must refrain from any dredging or other activities in the disputed territory, and, in particular, refrain from work of any kind on the two new caños, and must also fill the trench on the beach north of the eastern caño and it must likewise cause the removal from and prevent the entrance into the disputed territory of any private persons under its jurisdiction or control. The **North Sea Continental Shelf Cases (*Federal Republic of Germany v. Denmark*)**. The Court took account of the fact that the Federal Republic had not ratified that Convention, and held that the equidistance principle was not inherent in the basic concept of continental shelf rights,

Corfu Channel (*United Kingdom of Great Britain and Northern Ireland v. Albania*), The Court found that Albania was responsible under international law for the explosions that had taken place in Albanian waters and for the damage and loss of life which had ensued. It found that the minesweeping had violated Albanian sovereignty, because it had been carried out against the will of the Albanian Government.

In the case of **Barcelona Traction, Light and Power Company, Limited (*Belgium v. Spain*)**²², It also pointed out that the adoption of the theory of diplomatic protection of shareholders as such would open the door to competing claims on the part of different States, which could create an atmosphere of insecurity in international economic relations.

In the case of ***Mauritius v. United Kingdom***²³, the arbitral tribunal ruled that the Chagos Marine Protected Area was "not in accordance with the provisions of the Convention" and declared unanimously that in establishing the MPA surrounding the Chagos Archipelago the United Kingdom had breached its obligations under Articles 2(3), 56(2), and 194(4) of the Convention.

²¹ Certain Activities carried out by Nicaragua in the Border Area; Construction of a Road in Costa Rica along the San Juan River, *Costa Rica v Nicaragua*, Order on Provisional Measures, [2013] ICJ Rep 354, ICGJ 475 (ICJ 2013), 22nd November 2013, United Nations [UN]; International Court of Justice [ICJ]

²² *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*; Second Phase, International Court of Justice (ICJ), 5 February 1970, available at: <https://www.refworld.org/cases,ICJ,4040aec74.html> [accessed 27 August 2023]

²³ *Chagos Marine Protected Area Arbitration, Mauritius v United Kingdom*, Final Award, ICGJ 486 (PCA 2015), 18th March 2015, Permanent Court of Arbitration [PCA]

CONCLUSION:

Hence, the counsel for the applicant would humbly submit that taking into consideration the above internationally accepted environment principles and the cases cited, Kartina is in contravention of the principles of International Environmental Law and International Treaty Law.

ISSUE III: WHETHER OR NOT FUNDAMNETAL RIGHTS ENSHRINED IN CONSTITUTION OF KARTINA WILL APPLY TO THE PEOPLE OF DHALL?

RULE:

Article VII (2) of the treaty: As soon as a dispute to be settled in accordance with the paragraphs of this Article has arisen, the Parties are free to approach either the Kartinian or Dhallian domestic courts for the adjudication of the matter. The respective Constitution will apply.

Right to Equality (Articles 14 – 18)

Article 14 in The Constitution of Kartina²⁴: Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of Kartina Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 15 in The Constitution of Kartina²⁵: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 16 in The Constitution of Kartina²⁶: Equality of opportunity in matters of public employment.

²⁴ Constitution of Kartina, 1950, Art. 14

²⁵ Constitution of Kartina, 1950, Art. 15

²⁶ Constitution of Kartina, 1950, Art. 16

Article 17 in The Constitution of Kartina²⁷: Abolition of Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.

Article 18 in The Constitution of Kartina²⁸: Abolition of titles No title, not being a military or academic distinction, shall be conferred by the State No citizen of Kartina shall accept any title from any foreign State No person who is not a citizen of Kartina shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State Right to Freedom

Right to Freedom (Articles 19 – 22)²⁹- **Article 19 in The Constitution Of Kartina**: Protection of certain rights regarding freedom of speech etc

Article 20 in The Constitution of Kartina: Protection in respect of conviction for offences

Article 21 in The Constitution of Kartina: Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

Article 22 in The Constitution of Kartina: Protection against arrest and detention in certain case

Article 23 in The Constitution of Kartina: Prohibition of traffic in human beings and forced labour

Right to Freedom of Religion (Articles 25 – 28)³⁰ - **Article 24 in The Constitution Of Kartina**: Prohibition of employment of children in factories, etc No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment

²⁷ Constitution of Kartina, 1950, Art. 17

²⁸ Constitution of Kartina, 1950, Art. 18

²⁹ Constitution of Kartina, 1950, Art. 19,20,22,23

³⁰ Constitution of Kartina, 1950, Art. 25,26,27,28

Article 25 in The Constitution of Kartina: Freedom of conscience and free profession, practice and propagation of religion

Article 26 in The Constitution of Kartina: Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

Article 27 in The Constitution of Kartina: Freedom as to payment of taxes for promotion of any particular religion No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination

Article 28 in The Constitution of Kartina: Freedom as to attendance at religious instruction or religious worship in certain educational institutions

Cultural and Educational Rights (Articles 29 – 30)³¹- Article 29 in The Constitution Of Kartina: Protection of interests of minorities

Article 30 in The Constitution of Kartina: Right of minorities to establish and administer educational institutions

Right to Constitutional Remedies- Article 32³² in The Constitution of Kartina: Remedies for enforcement of rights conferred

ARGUMENT: The counsel for the applicant would like to humbly submit to this hon'ble tribunal that the fundamental rights enshrined in the Kartinian Constitution would apply to the people of Dhall. This is because Article VII (2) of the treaty which was signed between both the countries (Republic of Kartina and Democratic Republic of Dhall) speaks about the same.

Article VII of the Bilateral Treaty which was signed by both the parties provides for the settlement of disputes and differences with regards to the treaty. Article VII (2) reads as follows "*As soon as a dispute to be settled*

³¹ Constitution of Kartina, 1950, Art. 29,30

³² Constitution of Kartina, 1950, Art. 32

in accordance with the paragraphs of this Article has arisen, the Parties are free to approach either the Kartinian or Dhallian domestic courts for the adjudication of the matter. The respective Constitution will apply.” The sub clause two of the settlement of disputes and difference article clearly lays down that parties are free to approach either Kartinian or Dhallian domestic courts for the adjudication of the matter. In accordance to this clause, Democratic Republic of Dhall has approached the domestic court of Republic of Kartina to resolve the dispute. Furthermore, the Article VII (2) says that the respective constitution will apply. In this case it is very clear that since Democratic Republic of Dhall has approached the courts of Republic of Kartina to adjudicate the matter, it is understood that the Constitution of Kartina would apply to this dispute. It will thus follow that if Constitution of Kartina would apply to this dispute and the people of Dhall, it is implicit that the Fundamental rights would also be applicable.

EMMANUEL GAILLARD, the head of the international arbitration group of Shearman & Sterling published a paper in New York Law Journal on the topic Treaty-Based Jurisdiction:³³ Broad Dispute Resolution, in International Arbitration Law. Here, the author gave two approaches to answer the question of whether the dispute resolution clause of the treaty holds good to resolve the dispute or not. Under the first approach, the author mentions that *a treaty-based arbitral tribunal has jurisdiction over mere contractual claims when the dispute resolution clause is drafted in sufficiently broad language to extend to any disputes, including disputes in relation to the performance of a contract.* From this it is very clear that the if the settlement of differences and disputes clause is drafted in sufficiently in a broad language as there are no vague terms in the dispute resolution clause, it is clear that either countries can approach either country courts for resolutions of the dispute and that particular constitution will apply. The second approach³⁴ of the author is a more restrictive one where the author opines that *the broad wording of a dispute resolution clause is not sufficient justification for the jurisdiction of a treaty-based tribunal over purely contractual claims.* In the present case there was no use of board terms in Article VII which speaks about the settlements of differences and disputes.

³³ Emmanuel Gaillard, Treaty-Based Jurisdiction: Broad Dispute Resolution Clauses, Volume 234-NO. 68, New York Law Journal(6th October, 2005) Available at: <https://www.shearman.com/-/media/files/newsinsights/publications/2005/10/treaty-based-jurisdiction-broad-dispute-resolution-clauses.pdf>

³⁴ Id

We can say that the article VII is not a broad worded or a vaguely drafted article as all the subclauses are very clear and nothing ambiguous in the Article VII.

Article IX of the Indus Water treaty³⁵ signed between India and Pakistan speaks about the settlement of differences and disputes in which it lays down the on how to settle and whom to approach in case of the dispute arises. The clause of settlement of differences and disputes was been followed by both the countries in order to resolve the dispute. **Article 11 of the agreement between the government of the Kingdom of Morocco and the Government of the Republic of Croatia** talks about the settlement of the disputes between a contracting party and an investor of the other contracting party. The dispute arises between the parties and the parties followed the dispute resolution clause to resolve the dispute among the parties.³⁶ Thus, these cases signify the importance of following the dispute resolution cause. The same can be inferred in the present case also as Article VII of the treaty provides for the Settlement of disputes and differences and which act to be applied and which courts to be referred. It says either of the countries' courts can be referred and that particular Constitution would apply.

CONCLUSION:

Therefore, the counsel for the applicant would like to submit to this hon'ble tribunal that the fundamental rights enshrined in Constitution of Kartina would be applicable to the people of Dhall and Kartina's claim of the non-applicability of the fundamental rights is invalid.

³⁵ Media Center, Indus Waters Treaty, Ministry of External Affairs, Government of India [accessed 27th August, 2023] Available at: <https://mea.gov.in/bilateral-documents.htm?dtl/6439/Indus>

³⁶ Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco, ICSID Case No. ARB/00/4

PRAYER

Wherefore, in light of the facts stated, issues raised, arguments advanced and authorities cited, may this Hon'ble Interstate River Water Dispute Tribunal that it may be graciously pleased to adjudge and declare that:

1. The Republic of Kartina should not be given the power to dictate how natural resources are distributed.
2. The Republic of Kartina is in contravention of the principles of international environmental law and international treaty law.
3. Fundamental Rights enshrined in the Constitution of Kartina will apply to the people of Dhall.

Also, pass any other order it may deem fit, in the favour of the APPLICANT in the interest of Justice, Equity and Good Conscience.

All of which is most humbly and respectfully submitted

Place: The Republic of Kartina

S/d _____

Date: 27 August 2023

Counsel for the Applicant